

CHAPTER 261.

PLACE OF TRIAL OF CIVIL ACTIONS.

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261.01 Place of trial. Except as provided in section 220.12 and subject to the provisions for change of venue the proper place of trial of civil actions is as follows:

(1) **WHERE SUBJECT OF ACTION SITUATED.** Of an action within one of the four classes next following, the county in which the subject of the action or some part thereof is situated, viz.: (a) For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such estate or interest, or for an injury to real property. (b) For the partition of property. (c) For the foreclosure, redemption or other satisfaction of a mortgage of real property. (d) For the recovery of distrained personal property, except that when personal property is seized in outlying waters under the provisions of section 29.05 then the place of trial shall be in the county in which the seizure of said personal property was made and where said seizure was made at a place where 2 or more counties have common jurisdiction under sections 2.03 and 2.04, then the place of trial may be in either county.

(2) **WHERE CAUSE OF ACTION ARISES.** Of an action within either of the two classes next following the county where the cause or some part thereof arose, viz.: (a) Except as provided in subsection (9), against a public officer or person appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, shall do anything touching the duties of such officer. (b) For the recovery of a penalty or forfeiture imposed by statute; and when the cause arose where two or more counties have a common jurisdiction, under sections 2.03 and 2.04, the action may be brought in either county.

(4) **ACTION AGAINST RAILROADS.** Of an action against any railroad corporation as defined by s. 990.01, or against any corporation owning or operating any interurban railroad (except in condemnation proceedings), either in the county in which the cause of action arose or in that in which the plaintiff resides, if the road of such corporation extends into either county; if such road does not extend into either county, in any county into which its road does extend.

(5) **AGAINST INSURANCE COMPANIES.** Of an action against an insurance company, to recover on a policy of insurance, the county in which the defendant has its principal office or in which the plaintiff resides or, if brought by a person in a representative capacity by appointment of a court in the county in which such appointment was had, provided, however, that in the event an insurance company is sued or made a party to an action growing out of the negligent operation of a motor vehicle, the proper place of trial shall be in the county where the cause of action arose or where the person or persons, covered by an insurance policy by reason of which such insurance company is sued or made a party to said action, resides.

(6) **AGAINST OTHER CORPORATIONS.** Of an action against any other corporation the county in which it has its principal office or in which the cause of action or some part thereof arose.

(8) **ACTIONS BY STATE.** Of an action by the state against any county or county officer in any county; and actions brought to recover damages for trespass upon public lands, when the amount in controversy exceeds two hundred dollars in any county.

(9) **ACTIONS AGAINST THE STATE.** Of an action brought against the state or any state board or commission or any state officer in his official capacity, the county of Dane.

(10) **ACTIONS ON OFFICIAL BONDS.** Of an action for a breach of any official bond, in the county in which such bond is filed.

(11) **AUTO ACCIDENT ACTIONS.** Of an action growing out of the negligent operation

of a motor vehicle, the county in which the cause of action arose or where the defendant resides.

(11b) ASSAULT AND BATTERY ACTIONS. Of an action growing out of assault and battery, the county in which the cause of action arose or where the defendant resides.

(12) OTHER ACTIONS. Of any other action, the county in which any defendant resides at the commencement of the action; or if no defendant resides in this state, any county which the plaintiff designates in his complaint.

Cross Reference: See 247.05 for venue in actions for affirmance or annulment of marriage or for divorce.

A specific performance action to enforce a suit can be brought in the county in an option to purchase real estate does not constitute an action within (1) (a), since which any of the defendants reside pursuant to (12). State v. Conway, 26 W (2d) 410, the contract (option) and not the land is 132 NW (2d) 539. the subject matter of the action, and such

261.02 Place of trial, general rule, exceptions. The county designated in the complaint shall be the place of trial, unless the same be changed as provided in this chapter, except that every action named in s. 261.01 (1) can be commenced only in the county in which the property or some part thereof is situated.

History: 1961 c. 33.

261.021 Validation of certain divorces and annulments and affirmances of marriages. All divorces granted in this state and all judgments granted in this state annulling or affirming marriages based on actions commenced between July 14, 1947 and May 14, 1955, which when granted complied with the requirements of s. 261.02 [Stats. 1953] as to place of trial and are otherwise valid, are hereby declared to be valid even though the actions on which they are based were not commenced in the county designated in s. 261.01 (3) [Stats. 1953].

261.03 Change of venue to proper county. When the county designated in the complaint is not the proper place of trial, except as to actions named in subsection (1) of section 261.01, the defendant may, within twenty days after the service of the complaint, serve upon the plaintiff a demand in writing that the trial be had within a proper county, specifying the county or counties, and the reason therefor. Within five days after service of such demand the plaintiff may serve a written consent that the place of trial be changed, and specify to what county, if he have the option to name one and such consent shall change the place of trial accordingly. If the plaintiff's consent be not so served the defendant may, within twenty days after the service of his demand, move to change the place of trial, and the court or the presiding judge shall order the place changed with costs of motion. The right to obtain a change of the place of trial shall not be affected by any other proceedings in the action.

A demand for a change of venue alleging that the acts complained of occurred in another county and that defendants resided there was insufficient because it did not state that they resided there at the time of the commencement of the action, but where plaintiff's complaint supplied this information, the defect is immaterial and the change of venue must be granted. State ex rel. Klabačka v. Charles, 36 W (2d) 122, 152 NW (2d) 857.

261.04 Change of venue, grounds for. The court or the presiding judge thereof may change the place of trial in the following cases:

(1) When there is reason to believe that an impartial trial cannot be had in the designated county and when so changed it shall be to a county in which the cause complained of does not exist.

(2) When the convenience of witnesses and the ends of justice would be promoted.

(3) When the parties or their attorneys shall stipulate in writing to change the place of trial; and, in this case, the order may be made by a judge.

(4) On the motion of any party at any time before trial in an action for damages growing out of the negligent operation of a motor vehicle, to any proper county where any other action is pending for damages for the negligent operation of a motor vehicle involving the same accident.

261.05 Change of venue between county and circuit courts. When the parties or their attorneys so stipulate in writing, the place of trial of any civil action, over which the circuit and county courts have concurrent jurisdiction, shall be changed from the circuit court to the county court or from the county court to the circuit court; and filing such stipulation shall change the place of trial accordingly.

History: 1961 c. 495.

261.06 Change of venue if judge disqualified by interest. When the judge is a party or interested in any action in his court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and

may without such application, change the place of trial or call in another judge as provided in section 261.08. The fact that the judge is a taxpayer does not disqualify him.

261.07 Municipal court appeals; change of venue. The appellate court shall change the place of trial of any action commenced before a municipal justice upon application of the defendant in like manner and for like causes as in actions originally brought in the circuit court. The demand for consent to such change shall be made within 10 days after the defendant has notice of the appeal.

History: 1961 c. 495; 1967 c. 276 s. 39.

261.08 Venue changed for judge's prejudice; calling other judge. (1) Upon the application of any party, who files his affidavit, that he has good reason to, and does believe, that he cannot have a fair trial on account of the prejudice of the judge, naming him, the court shall request the chief justice of the supreme court or other designated justice to call some other judge to attend and hold court during the current or next term for the purpose of exercising jurisdiction in all actions and proceedings in which applications for change of the place of trial have been made for such reason. And while so in attendance said judge may make all orders and hear all applications and motions that may be brought on for hearing. If no other judge can hold court for such purpose, at either of such terms, an order changing the place of trial shall be entered on the first day of the next term. In no event, however, shall a judge against whom an affidavit of prejudice has been filed be allowed to choose the successor judge.

(2) If such application is made after a continuance obtained by the party filing such affidavit, it shall be granted only upon payment of costs, but no costs for the attendance of witnesses shall be included if notice of the application, with a copy of such affidavit, was served upon the opposite party at least ten days before the commencement of the term. But one change of the place of trial shall be granted to the same side under this section.

(3) The affidavit must be filed and motion thereon made on or before the first day of the term, at which the case is triable, or within 10 days after the case is noticed for trial; except that if the judge so named is the judge of some other jurisdiction, the affidavit must be filed and a copy thereof mailed to such judge at least 5 days before any proceeding is had before him in the case in which such affidavit is filed, including any motion upon the affidavit. The filing of such affidavit shall not deprive the presiding judge of the court in which the case is pending, of jurisdiction to determine pending motions made by the party filing such affidavit. No such affidavit shall name more than one judge, except that in a circuit court consisting of more than 3 branches such affidavit may, in cases other than those assigned to and pending in the criminal branches thereof, name 2 judges of said circuit court.

(4) Unless a called judge shall attend and begin the trial of such action or proceeding as early as the opening of court on the second day after the action is reached for trial in its regular order, the action shall not be called for trial (without consent of the parties) until such judge has given to the clerk of the court five days' notice of the time when he will attend, and the clerk shall give to the attorneys of record of all the parties immediate notice of the said time.

History: 1961 c. 140, 495, 643.

After an appeal to circuit court, where an affidavit of prejudice is filed, the judge has no jurisdiction except to order removal or call in a judge; if he does neither, he cannot later dismiss the appeal under 306.15 for failure to bring the appeal to trial. It was not the duty of appellant's counsel to draft the order for removal in the absence of a request that he do so, nor has he any duty to take action to bring the case on for trial. *Schwanke v. Reid*, 16 W (2d) 521, 114 NW (2d) 845.

In a proceeding to modify a divorce judgment as to alimony, the judge may reject an affidavit of prejudice filed by the moving party. *Luedtke v. Luedtke*, 29 W (2d) 567, 139 NW (2d) 553.

261.09 Time for motion to change venue. The place of trial shall not be changed, except under the provisions of section 261.08 after one continuance had on the motion of the party applying for a change unless it shall appear to the court that the cause therefor was discovered or developed after such continuance.

261.10 Proceedings after order for change of venue. When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by him to the clerk of the court to which the trial is changed, with a statement of his fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in section 261.03, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within twenty days from the

making of the order to change the place of trial, unless such time be extended, the moving party shall lose his right to the change except in the case mentioned in section 261.03, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within ten days after the expiration of said twenty days; but the other party, may, within forty days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

261.11 Conclusiveness of change of venue; second motion. After trial had in the court to which the action has been changed, the proceedings for such change shall be conclusive unless a motion to remand was made before such trial was entered upon. If after the transmission of the papers an order changing the place of trial shall be reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on such reversal or setting aside of the order the party who filed his affidavit of prejudice may renew his application for a change of venue on such affidavit at the first term of court after the return of the papers; and such renewed application shall be treated as the original application.